

reverses or terminates a sanction imposed under this subpart. In accordance with the provisions of 42 CFR part 1003, the OIG may impose civil money penalties on the HMO or CMP in addition to or in place of the sanctions that HCFA may impose under paragraph (d) of this section.

[59 FR 36083, July 15, 1994, as amended at 60 FR 45681, Sept. 1, 1995; 61 FR 13448, Mar. 27, 1996]

Subpart M—Change of Ownership and Leasing of Facilities: Effect on Medicare Contract

§ 417.520 General provisions.

(a) *What constitutes change of ownership.* (1) *Partnership.* The removal, addition, or substitution of a partner, unless the partners expressly agree otherwise as permitted by applicable State law, constitutes a change of ownership.

(2) *Unincorporated sole proprietor.* Transfer of title and property to another party constitutes change of ownership.

(3) *Corporation.* (i) The merger of the HMO's or CMP's corporation into another corporation or the consolidation of the HMO or CMP with one or more other corporations, resulting in a new corporate body, constitutes a change of ownership.

(ii) Transfer of corporate stock or the merger of another corporation into the HMO's or CMP's corporation, with the HMO or CMP surviving, does not ordinarily constitute change of ownership.

(b) *Advance notice requirement.* (1) An HMO or CMP that has a Medicare contract in effect and is considering or negotiating a change in ownership must notify HCFA at least 60 days before the anticipated effective date of the change.

(2) If the HMO or CMP fails to give HCFA the required notice timely, it continues to be liable for capitation payments that HCFA makes to it on behalf of Medicare enrollees after the date of change of ownership.

(c) *Novation agreement defined.* A novation agreement is an agreement among the current owner of the HMO or CMP, the prospective new owner, and HCFA—

(1) That is embodied in a document executed and signed by all three parties;

(2) That meets the requirements of § 417.522; and

(3) Under which HCFA recognizes the new owner as the successor in interest to the current owner's Medicare contract.

(d) *Effect of change of ownership without novation agreement.* Except to the extent provided in paragraph (b)(2) of this section, the effect of a change of ownership without a novation agreement is that—

(1) The existing contract becomes invalid; and

(2) If the new owner wishes to participate in the Medicare program, it must apply for, and enter into, a contract in accordance with subpart L of this part.

(e) *Effect of change of ownership with novation agreement.* If the HMO or CMP submits a novation agreement that meets the requirements of § 417.522, and HCFA signs it, the new owner becomes the successor in interest to the current owner's Medicare contract.

[60 FR 45681, Sept. 1, 1995]

§ 417.522 Novation agreement requirements.

(a) *Conditions for HCFA approval of a novation agreement.* HCFA approves a novation agreement if the following conditions are met:

(1) *Advance notification.* The HMO or CMP notifies HCFA at least 60 days before the date of the proposed change of ownership.

(2) *Advance submittal of agreement.* The HMO or CMP submits to HCFA, at least 30 days before the proposed change of ownership date, three signed copies of the novation agreement containing the provisions specified in paragraph (b) of this section, and one copy of other relevant documents required by HCFA.

(3) *HCFA's determination.* HCFA determines that—

(i) The proposed new owner is in fact a successor in interest to the contract;

(ii) Recognition of the new owner as a successor in interest to the contract is in the best interest of the Medicare program; and

(iii) The successor organization meets the requirements to qualify as